

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,
ex rel. JOHN P. RAYNOR,

Relator,

v.

NATIONAL RURAL UTILITIES
COOPERATIVE FINANCE CORPORATION;
et al.,

Defendants.

Case No. 8:08-CV-48

**CONSENT MOTION OF
DEFENDANTS FOR EXTENSION
OF TIME TO RESPOND TO THIRD
AMENDED COMPLAINT AND FOR
A BRIEFING SCHEDULE**

Defendants National Rural Utilities Cooperative Finance Corporation, Sheldon C. Petersen, John J. List, and Steven L. Lilly with the permission and consent of each of the other Defendants in this action, *i.e.*, National Rural Electric Cooperative Association, Glenn L. English, Deloitte Touche USA, LLP., Randall B. Johnston, Ernst & Young LLP, Moody's Corp., Moody's Investors Service, Inc., The McGraw-Hill Companies, Inc., and Fitch, Inc.¹ (collectively "Defendants"), respectfully move the Court to alter the briefing schedule established by Nebraska Civil Rule 7.01, to suspend the parties obligations under Fed. R. Civ. P. 26 and to stay discovery pending resolution of dispositive motions.

Counsel for the parties have conferred and Relator has agreed to the schedule and relief set out below.

¹ Fitch Ratings, Ltd. has not been served in this action.

Defendants intend to coordinate briefing on dispositive motions that each Defendant contemplates filing in response to Relator's Third Amended Complaint and seek a briefing schedule that will facilitate that coordination. Specifically, for motions Defendants file under Rule 12 of the Federal Rules of Civil Procedure, each of the Defendants seeks leave to adopt a single joint brief in support of positions common to all Defendants and then, if necessary, to file a separate, non-duplicative brief on any remaining issues specific to a particular defendant, on or before December 14, 2010. Defendants also request that the time for Relator to oppose the motions be extended to February 14, 2011, and that the time for Defendants to reply in support of their motions, jointly and separately, be extended to March 10, 2011. Finally, Defendants respectfully request that Rule 26 obligations be suspended and discovery stayed until resolution of dispositive motions. A proposed order has been submitted to the Court. The grounds for the motion are as follows:

1. Relator served his Third Amended Complaint on Defendants on dates ranging from September 27 to September 30, 2010.
2. Each defendant sought and received a 30-day Clerk's extension of the date by which they are to file responsive pleadings or motions and, as a result, responsive pleadings are due to be filed as follows:

Date	Defendants Due to File on that Date
November 18, 2010	Ernst & Young LLP Deloitte Touche USA, LLP Glenn L. English
November 19, 2010	National Rural Electric Cooperative Association Randall B. Johnston Steven L. Lilly John J. List Sheldon C. Petersen

November 22, 2010	Fitch, Inc. Moody's Corp. Moody's Investors Service, Inc. The McGraw-Hill Companies, Inc. National Rural Utilities Cooperative Finance Corporation
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3. Consolidated briefing on responsive motions would establish a consistent schedule for all Defendants and insure an orderly progress of the litigation through briefing on motions to dismiss.
4. In related litigation brought against many of these same Defendants by Relator or his associates, similar consolidated schedules have simplified the briefing process and avoided duplication of the issues and arguments presented to the Court for decision.
5. Upon review of the pleading in this case, Defendants determined that a similar approach would produce similar results of benefit to the Court and the parties. A substantial number of the arguments will apply to most if not all of the Defendants in this action. A small minority of issues may apply differently to some individual defendants. Defendants anticipate that coordinated briefing will result in a net reduction in the number of pages of written argument, a narrowing of the issues, or varieties of issue, presented to Court, and greater specificity in briefs that address only one Defendant.
6. Preparation, coordination and filing of a joint brief and separate non-duplicative briefs on individual issues will require additional time beyond the 30-day extension already granted each Defendant.
7. Rule 26 obligations should be suspended and all discovery in this matter should be stayed pending resolution of dispositive motions because the mere filing of a *qui tam* complaint does not entitle a relator to discovery. See, e.g., United States ex rel. Foster v. v. Bristol-Myers Squibb Co., 587 F. Supp. 2d 805, 819 (E.D.Tex. 2008) (citing cases). Defendants

anticipated grounds for dismissal include: lack of subject matter jurisdiction under Rule 12(b)(1); failure to state a claim under Rule 12(b)(6); and failure to satisfy the particularized pleading standard of Rule 9(b). In these circumstances, courts consistently deny relators discovery before their pleadings have been found to be sufficient to withstand a motion to dismiss. See United States ex rel. Joshi v. St. Luke's Hosp., Inc., 441 F.3d 552, 559-60 (8th Cir. 2006) ("The reluctance of courts to permit *qui tam* relators to use discovery to meet the requirements of Rule 9(b) reflects, in part, a concern that a *qui tam* plaintiff, who has suffered no injury in fact, may be particularly likely to file suit as a pretext to uncover unknown wrongs." (quoting United States ex rel. Karvelas v. Melrose-Wakefield Hosp., 360 F.3d 220, 231 (1st Cir. 2004)) (emphasis added)).

WHEREFORE, the Defendants respectfully request that their motion be granted and that the Court enter an order in the form of the Proposed Order submitted herewith.

Respectfully submitted this 12 day of November, 2010.

NATIONAL RURAL UTILITIES
COOPERATIVE FINANCE
CORPORATION, SHELDON C.
PETERSEN, JOHN J. LIST, STEVEN L.
LILLY, Defendants.

By: /s/ Thomas J. Culhane

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CERTIFICATE OF SERVICE

It is hereby certified that on November 12, 2010, the foregoing Consent Motion of Defendants for Extension of Time to Respond to Third Amended Complaint and for a Briefing Schedule was filed with the Clerk of the United States District Court using the CM/ECF filing system, effecting service upon those parties presently entitled to notice:

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Notice and a copy of the Motion has been served by mailing the same by regular United States mail, postage prepaid, on November 12, 2010, to the following non-CM/ECF System users:

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South Miami, FL 33143

s/ Thomas J. Culhane